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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. _____

To amend titles XVIII and XIX of the Social Security Act to require providers of services and health maintenance organizations under the Medicare and Medicaid programs to provide for certain policies to be in place relating to do-not-resuscitate orders or similar physician's orders for unemancipated minors receiving services.

IN THE HOUSE OF REPRESENTATIVES

Mr. LATURNER (for himself and [see ATTACHED LIST of cosponsors]) introduced the following bill; which was referred to the Committee on

A BILL

To amend titles XVIII and XIX of the Social Security Act to require providers of services and health maintenance organizations under the Medicare and Medicaid programs to provide for certain policies to be in place relating to do-not-resuscitate orders or similar physician's orders for unemancipated minors receiving services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Simon Crosier Act”.

1 **SEC. 2. MEDICARE AND MEDICAID REQUIREMENTS FOR**
2 **CERTAIN POLICIES RELATING TO DO-NOT-RE-**
3 **SUSCITATE ORDERS OR SIMILAR PHYSI-**
4 **CIAN'S ORDERS.**

5 (a) MEDICARE PROVIDER AGREEMENT REQUIRE-
6 MENT.—

7 (1) IN GENERAL.—Section 1866(f) of the Social
8 Security Act (42 U.S.C. 1395cc(f)) is amended by
9 adding at the end the following new paragraphs:

10 “(5) For purposes of subsection (a)(1)(Q) and
11 sections 1819(c)(1)(E), 1833(s), 1852(i),
12 1876(c)(8), and 1891(a)(6), the requirement of this
13 subsection, in addition to paragraph (1), is that a
14 provider of services, MA organization, or prepaid or
15 eligible organization (as the case may be) maintain
16 the following written policies and procedures with re-
17 spect to all unemancipated minors receiving medical
18 care by or through the provider or organization (or
19 prospective patient or resident, with respect to the
20 provider or organization, who is an unemancipated
21 minor):

22 “(A) A do-not-resuscitate order or similar
23 physician’s order shall not be instituted, either
24 orally or in writing, unless at least one parent
25 or legal guardian of such unemancipated minor
26 has first been informed of the physician’s intent

1 to institute such an order and a reasonable at-
2 tempt has been made to inform the other par-
3 ent if the other parent is reasonably available
4 and has custodial or visitation rights. Such in-
5 formation must be provided both orally and in
6 writing unless, in reasonable medical judgment,
7 the urgency of the decision requires reliance on
8 only providing the information orally. Oral pro-
9 vision of such information shall include speak-
10 ing to at least one parent or legal guardian in
11 person or on the telephone, and shall not be
12 limited to recorded voice messages. Provision of
13 such information shall include at least 72 hours
14 of diligent efforts made by the physician or pro-
15 vider to contact and notify at least one parent
16 or legal guardian. The provision of such infor-
17 mation shall be contemporaneously recorded in
18 the medical record of the unemancipated minor,
19 specifying by whom and to whom the informa-
20 tion was given, the date and time of its provi-
21 sion, and whether it was provided in writing. In
22 the case that only one parent has been in-
23 formed, the nature of reasonable attempts to
24 inform the other parent or the reason why such
25 attempts were not made shall be contempora-

1 neously recorded in the medical record of the
2 unemancipated minor.

3 “(B) Either parent of the unemancipated
4 minor or the unemancipated minor’s guardian
5 may refuse consent for a do-not-resuscitate
6 order or similar physician’s order for the
7 unemancipated minor, either in writing or oral-
8 ly. Any such refusal of consent must be contem-
9 poraneously recorded in the medical record of
10 the unemancipated minor. No do-not-resuscitate
11 order or similar physician’s order shall be insti-
12 tuted either orally or in writing if there has
13 been such a refusal of consent.

14 “(C) The provider shall not have the au-
15 thority to require the withholding or withdrawal
16 of life-sustaining procedures from an
17 unemancipated minor over the objection of the
18 parent or legal guardian, unless electronic
19 brain, heart, and respiratory monitoring activity
20 conclusively establishes that the minor has died.
21 There shall be a presumption that the continu-
22 ation of life is in the minor’s best interest.

23 “(D) Within 48 hours of being notified of
24 the intent to institute a do-not-resuscitate order
25 or a similar physician’s order according to sub-

1 paragraph (A), a parent or legal guardian may
2 request a transfer of the unemancipated minor
3 patient or resident to another facility or dis-
4 charge. If a transfer is requested by a parent
5 or legal guardian, the hospital or health care fa-
6 cility under whose care the unemancipated
7 minor is admitted must continue provision of
8 artificial life-sustaining procedures and life-sus-
9 taining artificial nutrition and hydration for a
10 minimum of 15 days after the transfer request
11 has been made known and make every reason-
12 able effort to assist the requesting parent or
13 legal guardian in the transfer process. The hos-
14 pital or health care facility's duties and finan-
15 cial obligations regarding transfer shall be gov-
16 erned by existing state law, applicable rules or
17 regulations, hospital policy, and relevant third-
18 party payment contracts.

19 “(E) Upon the request of a patient or resi-
20 dent or a prospective patient or resident, the
21 provider of services or organization shall dis-
22 close in writing any policies relating to the pa-
23 tient or resident or the services the patient or
24 resident may receive involving resuscitation or
25 life-sustaining measures, including any policies

1 related to treatments deemed non-beneficial, in-
2 effective, futile or inappropriate, within the pro-
3 vider of services or organization. Nothing in
4 this subparagraph shall require a provider of
5 services or organization to have a written policy
6 relating to or involving resuscitation, life-sus-
7 taining or non-beneficial treatment for
8 unemancipated minor patients or adult patients,
9 residents or wards.

10 “(6) In applying paragraph (5)(A), a deter-
11 mination based on “reasonable medical judgement”
12 shall not be solely based on disability alone or the
13 view that the life of a person with a disability is of
14 lower value or of lower quality than that of a person
15 without a disability regardless of whether the per-
16 son’s disability is pre-existing or newly acquired and
17 therefore must not serve as the sole basis for the do-
18 not-resuscitate order or similar physician’s order un-
19 less treatment is determined to be physiologically fu-
20 tile and supported with objective evidence that is
21 documented in the patient’s records in writing.”.

22 (2) CONFORMING AMENDMENTS.—

23 (A) Section 1866(a)(1)(Q) of the Social
24 Security Act (42 U.S.C. 1395cc(a)(1)(Q)) is
25 amended—

1 (i) by striking “requirement” and in-
2 serting “requirements”; and

3 (ii) by inserting “and certain do-not-
4 resuscitate orders or similar physician’s or-
5 ders” after “advance directives”.

6 (B) Section 1819(c)(1)(E) of the Social
7 Security Act (42 U.S.C. 1395i–3(c)(1)(E)) is
8 amended—

9 (i) by striking “requirement” and in-
10 serting “requirements”; and

11 (ii) by inserting “and certain do-not-
12 resuscitate orders or similar physician’s or-
13 ders” after “advance directives”.

14 (C) Section 1833(s) of the Social Security
15 Act (42 U.S.C. 1395l(s)) is amended—

16 (i) by striking “requirement” and in-
17 serting “requirements”; and

18 (ii) by inserting “and certain do-not-
19 resuscitate orders or similar physician’s or-
20 ders” after “advance directives”.

21 (D) Section 1852(i) of the Social Security
22 Act (42 U.S.C. 1395w–22(i)) is amended—

23 (i) by striking “requirement” and in-
24 serting “requirements”; and

1 (ii) by inserting “and certain do-not-
2 resuscitate orders or similar physician’s or-
3 ders” after “advance directives”.

4 (E) Section 1876(c)(8) of the Social Secu-
5 rity Act (42 U.S.C. 1395mm(c)(8)) is amend-
6 ed—

7 (i) by striking “requirement” and in-
8 serting “requirements”; and

9 (ii) by inserting “and certain do-not-
10 resuscitate orders or similar physician’s or-
11 ders” after “advance directives”.

12 (F) Section 1891(a)(6) of the Social Secu-
13 rity Act (42 U.S.C. 1395bbb(a)(6)) is amend-
14 ed—

15 (i) by striking “requirement” and in-
16 serting “requirements”; and

17 (ii) by inserting “and certain do-not-
18 resuscitate orders or similar physician’s or-
19 ders” after “advance directives”.

20 (3) EFFECTIVE DATE.—The amendments made
21 by this subsection shall apply with respect to items
22 and services furnished on or after the date that is
23 90 days after the date of the enactment of this Act.

24 (b) MEDICAID STATE PLAN REQUIREMENT.—

1 (1) IN GENERAL.—Section 1902(w) of the So-
2 cial Security Act (42 U.S.C. 1396a(w)) is amended
3 by adding at the end the following new paragraphs:

4 “(6) For purposes of subsection (a)(57) and
5 sections 1903(m)(1)(A) and 1919(c)(2)(E), the re-
6 quirement of this subsection, in addition to para-
7 graph (1), is that a provider or organization (as the
8 case may be) maintain the following written policies
9 and procedures with respect to all unemancipated
10 minors receiving medical care by or through the pro-
11 vider or organization (or prospective patient or resi-
12 dent, with respect to the provider or organization,
13 who is an unemancipated minor):

14 “(A) A do-not-resuscitate order or similar
15 physician’s order shall not be instituted, either
16 orally or in writing, unless at least one parent
17 or legal guardian of such unemancipated minor
18 has first been informed of the physician’s intent
19 to institute such an order and a reasonable at-
20 tempt has been made to inform the other par-
21 ent if the other parent is reasonably available
22 and has custodial or visitation rights. Such in-
23 formation must be provided both orally and in
24 writing unless, in reasonable medical judgment,
25 the urgency of the decision requires reliance on

1 only providing the information orally. Oral pro-
2 vision of such information shall include speak-
3 ing to at least one parent or legal guardian in
4 person or on the telephone, and shall not be
5 limited to recorded voice messages. Provision of
6 such information shall include at least 72 hours
7 of diligent efforts made by the physician or pro-
8 vider to contact and notify at least one parent
9 or legal guardian. The provision of such infor-
10 mation shall be contemporaneously recorded in
11 the medical record of the unemancipated minor,
12 specifying by whom and to whom the informa-
13 tion was given, the date and time of its provi-
14 sion, and whether it was provided in writing. In
15 the case that only one parent has been in-
16 formed, the nature of reasonable attempts to
17 inform the other parent or the reason why such
18 attempts were not made shall be contempora-
19 neously recorded in the medical record of the
20 unemancipated minor.

21 “(B) Either parent of the unemancipated
22 minor or the unemancipated minor’s guardian
23 may refuse consent for a do-not-resuscitate
24 order or similar physician’s order for the
25 unemancipated minor, either in writing or oral-

1 ly. Any such refusal of consent must be contem-
2 poraneously recorded in the medical record of
3 the unemancipated minor. No do-not-resuscitate
4 order or similar physician's order shall be insti-
5 tuted either orally or in writing if there has
6 been such a refusal of consent.

7 “(C) The provider shall not have the au-
8 thority to require the withholding or withdrawal
9 of life-sustaining procedures from an
10 unemancipated minor over the objection of the
11 parent or legal guardian, unless electronic
12 brain, heart, and respiratory monitoring activity
13 conclusively establishes that the minor has died.
14 There shall be a presumption that the continu-
15 ation of life is in the minor's best interest.

16 “(D) Within 48 hours of being notified of
17 the intent to institute a do-not-resuscitate order
18 or a similar physician's order according to sub-
19 paragraph (A), a parent or legal guardian may
20 request a transfer of the unemancipated minor
21 patient or resident to another facility or dis-
22 charge. If a transfer is requested by a parent
23 or legal guardian, the hospital or health care fa-
24 cility under whose care the unemancipated
25 minor is admitted must continue provision of

1 artificial life-sustaining procedures and life-sus-
2 taining artificial nutrition and hydration for a
3 minimum of 15 days after the transfer request
4 has been made known and make every reason-
5 able effort to assist the requesting parent or
6 legal guardian in the transfer process. The hos-
7 pital or health care facility's duties and finan-
8 cial obligations regarding transfer shall be gov-
9 erned by existing state law, applicable rules or
10 regulations, hospital policy, and relevant third-
11 party payment contracts.

12 “(E) Upon the request of a patient or resi-
13 dent or a prospective patient or resident, the
14 provider of services or organization shall dis-
15 close in writing any policies relating to the pa-
16 tient or resident or the services the patient or
17 resident may receive involving resuscitation or
18 life-sustaining measures, including any policies
19 related to treatments deemed non-beneficial, in-
20 effective, futile or inappropriate, within the pro-
21 vider of services or organization. Nothing in
22 this subparagraph shall require a provider of
23 services or organization to have a written policy
24 relating to or involving resuscitation, life-sus-
25 taining or non-beneficial treatment for

1 unemancipated minor patients or adult patients,
2 residents or wards.

3 “(7) In applying paragraph (6)(A), a deter-
4 mination based on “reasonable medical judgement”
5 shall not be solely based on disability alone or the
6 view that the life of a person with a disability is of
7 lower value or of lower quality than that of a person
8 without a disability regardless of whether the per-
9 son’s disability is pre-existing or newly acquired and
10 therefore must not serve as the sole basis for the do-
11 not-resuscitate order or similar physician’s order un-
12 less treatment is determined to be physiologically fu-
13 tile and supported with objective evidence that is
14 documented in the patient’s records in writing.”.

15 (2) CONFORMING AMENDMENTS.—

16 (A) Section 1903(m)(1)(A) of the Social
17 Security Act (42 U.S.C. 1396b(m)(1)(A)) is
18 amended in the matter preceding clause (i), by
19 striking “requirement” and inserting “require-
20 ments”.

21 (B) Section 1919(c)(2)(E) of the Social
22 Security Act (42 U.S.C. 1396r(c)(2)(E)) is
23 amended—

24 (i) by striking “requirement” and in-
25 serting “requirements”; and

1 (ii) by inserting “and certain do-not-
2 resuscitate orders or similar physician’s or-
3 ders” after “advance directives”.

4 (3) EFFECTIVE DATE.—

5 (A) IN GENERAL.—Except as provided in
6 paragraph (2), the amendments made by this
7 subsection shall take effect on the date of the
8 enactment of this Act and shall apply to serv-
9 ices furnished on or after the date that is 90
10 days after the date of the enactment of this
11 Act.

12 (B) EXCEPTION IF STATE LEGISLATION
13 REQUIRED.—In the case of a State plan for
14 medical assistance under title XIX of the Social
15 Security Act which the Secretary of Health and
16 Human Services determines requires State leg-
17 islation (other than legislation appropriating
18 funds) in order for the plan to meet the addi-
19 tional requirement imposed by the amendments
20 made by this subsection, the State plan shall
21 not be regarded as failing to comply with the
22 requirements of such title solely on the basis of
23 its failure to meet this additional requirement
24 before the first day of the first calendar quarter
25 beginning after the close of the first regular

1 session of the State legislature that begins after
2 the date of the enactment of this Act. For pur-
3 poses of the previous sentence, in the case of a
4 State that has a 2-year legislative session, each
5 year of such session shall be deemed to be a
6 separate regular session of the State legislature.